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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation and Petition to
Revoke Probation Against:

SAM SI-QUN TANG
2221 Kenry Way
South San Francisco, CA 94080

RCP License No. 15399

Respondent.

Case No. D1 2007 018

**ACCUSATION
AND PETITION TO REVOKE
PROBATION**

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about August 24, 1992, the Respiratory Care Board (Board) issued Respiratory Care Practitioner License Number 15399 to Sam Si-Qun Tang (Respondent). The license is current and valid and will expire on October 31, 2009.

DISCIPLINARY HISTORY

3. Effective December 13, 2007, through a stipulated settlement in case no. R-2099, Respondent was placed on three years probation with terms and conditions. A true and accurate copy of the Board's Decision in Case No. R-2099 is attached hereto as Exhibit A and incorporated by reference as though fully set forth herein.

JURISDICTION

4. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 3710 of the Code states: “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

6. Section 3718 of the Code states:
“The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

7. Section 3750 of the Code states:
“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

...

“(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.”

“(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).”

“(j) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a respiratory care practitioner.”

8. Section 3752 of the Code states:

“A plea or verdict of guilty or a conviction following a plea of nolo contendere

1 made to a charge of any offense which substantially relates to the qualifications,
2 functions, or duties of a respiratory care practitioner is deemed to be a conviction within
3 the meaning of this article. The board shall order the license suspended or revoked, or
4 may decline to issue a license, when the time for appeal has elapsed, or the judgment of
5 conviction has been affirmed on appeal or when an order granting probation is made
6 suspending the imposition of sentence, irrespective of a subsequent order under Section
7 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to
8 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
9 accusation, information, or indictment.”

10 9. California Code of Regulations, title 16, section 1399.370, states:

11 “For the purposes of denial, suspension, or revocation of a license, a crime or act
12 shall be considered to be substantially related to the qualifications, functions or duties of
13 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
14 perform the functions authorized by his or her license or in a manner inconsistent with the
15 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
16 those involving the following:

17 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
18 abetting the violation of or conspiring to violate any provision or term of the Act.”

19 “(b) Conviction of a crime involving fiscal dishonesty, theft, or larceny.”

20 COST RECOVERY

21 10. Section 3753.5, subdivision (a) of the Code states:

22 "In any order issued in resolution of a disciplinary proceeding before the board,
23 the board or the administrative law judge may direct any practitioner or applicant found to have
24 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
25 investigation and prosecution of the case."

26 11. Section 3753.7 of the Code states:

27 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
28 include attorney general or other prosecuting attorney fees, expert witness fees, and other

1 administrative, filing, and service fees."

2 12. Section 3753.1 of the Code states:

3 "(a) An administrative disciplinary decision imposing terms of probation may
4 include, among other things, a requirement that the licensee-probationer pay the monetary costs
5 associated with monitoring the probation. "

6 FIRST CAUSE FOR DISCIPLINE AND REVOCATION OF PROBATION

7 (Substantially-related Conviction; Dishonest Act)

8 13. Respondent is subject to disciplinary action because on June 23, 2008, he
9 was convicted of violating Penal Code section 666/484 [petty theft] in violation of code sections
10 3750(d) and 3752, 3750(g) and CCR 1399.370(a) and (b) [substantially-related theft conviction]
11 and 3750 (j) [dishonest act.] The circumstances are as follows:

12 12. On or about April 10, 2008, Respondent was in the Sears Department store
13 in San Mateo, California. A Sears Loss Prevention agent observed respondent open a video
14 game priced at \$19.99 and remove the security tag. Respondent concealed the video game in a
15 Sears newspaper ad, and left the store without paying. About five minutes later, respondent re-
16 entered the store and took another video game. He again opened the box and removed the
17 security tag, concealed the game in a newspaper ad, and walked out of the store.

18 13. Agent Mathews confronted Respondent in the parking lot, identified
19 himself as a Sears Security agent and asked respondent if he had taken anything from the store
20 without paying. Respondent admitted that he stole the video game on his person, and admitted
21 that he had stolen another video game from Sears which was in the trunk of his car in the parking
22 lot. Agent Mathews escorted respondent into the Sears store, and contacted the San Mateo
23 Police Department. Police Officer M. Leishman responded, and advised respondent of his
24 Miranda rights. Respondent waived his rights, and admitted that he stole two video games by
25 removing the wrapper and security tags, and hiding the merchandise in a newspaper ad.

26 14. Respondent consented to a search of the trunk of his car, and Officer
27 Leishman located one video game which respondent identified as the game he had stolen. Inside
28 of Respondent's trunk, in plain view, Officer Leishman observed a number of empty retail store

1 bags, one of which had aluminum foil loose inside of it. Based on Officer Leishman's training
2 and experience, shoplifters frequently use bags with aluminum foil lining to defeat store security
3 systems. Officer Leishman asked respondent what the empty bags were for, and respondent
4 stated he used the aluminum foil for preserving food, and the bags were for his children's
5 lunches. Respondent was arrested for violating Penal Code section 666 [theft with a prior
6 conviction] and Penal Code section 460(B) [theft from a retail merchant.]

7 15. On or about April 29, 2008, a criminal complaint titled *People vs. Sam*
8 *Siqun Tang*, case no. NM 375376 was filed in Superior Court of California, San Mateo County.
9 Count 1 charge respondent with a misdemeanor violation of Penal Code section 666 [prior
10 conviction of Penal Code section 484, theft.] Count 2 charged respondent with a misdemeanor
11 violation of Penal Code section 460(B) [theft from a retail merchant.] Count 3 charged
12 Respondent with a misdemeanor violation of Penal Code section 666 [theft with a prior
13 conviction.]

14 16. On or about May 15, 2008, Respondent entered a plea of not guilty to all
15 counts. On or about June 23, 2008, Respondent withdrew his not guilty plea and entered a plea
16 of Nolo Contendere to Count 1. Upon motion of the District Attorney, all remaining counts were
17 dismissed in light of the negotiated plea.

18 17. Respondent was sentenced as follows: imposition of sentence was
19 suspended. He was placed on court probation for two years; and ordered to serve 1 day in jail
20 with credit for time served of 1 day.

21 18. Respondent's license is subject to discipline based on his conviction of
22 Penal Code section 666 [theft with a prior conviction] which is in violation of code sections
23 3750(d) and 3752, 3750(g) and CCR 1399.370(a) and (b) [substantially-related theft conviction]
24 and the theft conviction is a dishonest act in violation of section 3750(j).

25 SECOND CAUSE FOR DISCIPLINE AND REVOCATION OF PROBATION

26 (Dishonest Act; Probation Violation)

27 19. The allegations contained in paragraphs 12 through 17 above are
28 incorporated herein.

1 20. Probation Condition 3 of the Decision and Order in case no. R-2099 states:
2 “Respondent shall file quarterly reports of compliance under penalty of perjury,
3 on forms to be provided to the probation monitor assigned by the Board. Omission or
4 falsification in any manner of any information on these reports shall constitute a violation of
5 probation and shall result in the filing of an accusation and/or a petition to revoke probation
6 against respondent’s care practitioner license.”

7 21. On or about June 29, 2008, Respondent completed a Quarterly Report of
8 Compliance as required by Probation Condition 3. Question 14 asks: “Have you violated, been
9 arrested, diverted for, convicted of, or pled nolo contendere in any state court, federal court or
10 foreign country to any: a) misdemeanor b) felony c) other offense.” Respondent answered “no”
11 when in fact he had been convicted of Penal Code section 666 on June 23, 2008.

12 22. Therefore, Respondent’s probation is subject to revocation based on his
13 failure to report the arrest in his Quarterly Report dated June 23, 2008 when specifically asked,
14 which is also a violation of code section 3750(j) [dishonest act].

15 THIRD CAUSE FOR REVOCATION OF PROBATION

16 (Obey All Laws)

17 23. The allegations contained in paragraphs 12 through 21 above are
18 incorporated herein.

19 24. Probation Condition 2 of the Decision and Order in case no. R-2099 states:
20 “Obey all laws. . . “Respondent shall notify the Board in writing within 14 days of
21 any incident resulting in his arrest, or charges filed against, or a citation issued against
22 Respondent.”

23 25. On April 10, 2008, Respondent was arrested by San Mateo Police
24 Department. He did not notify the Board in writing within 14 days, as required by Probation
25 Condition 2.

26 26. Therefore, Respondent’s probation is subject to revocation for failure to
27 comply with Probation Condition 2.

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alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Revoking or suspending Respiratory Care Practitioner License No. 15399;
2. Revoking the probation that was granted in Case No. R-2099;
3. Ordering Sam Si-Qun Tang to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;
4. Taking such other and further action as deemed necessary and proper.

DATED: November 25, 2008

Original signed by Liane Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant